**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929**

**MFA.No. 591 of 2000()**
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**OP.547/1998 of FAMILY COURT,KOZHIKODE**
**.....**

**APPELLANT: PETITIONER**
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**A.M.SADANANDAN, S/O.KRISHNAN,**
**AGED 55 YEARS, ADHIKARA**
**MANAMEL HOUSE, P.O. ARIYALLUR,**
**ARIYALLUR AMSOM & DESOM,**
**THIRURANGADI TALUK**
**MALAPPURAM DIST.**

**BY ADV. SRI.K.P.DANDAPANI**

**RESPONDENT: RESPONDENT**
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**P.SAVITHRI, D/O.SEKHARAN, AGED 45 YEARS,**
**PERUNNAR VAYAL HOUSE,**
**P.O.KARAPARAMBA,**
**WEST HILL ROAD, KOZHIKODE.**

**BY ADV. SRI.C.R.SIVAKUMAR - R1**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A.NO.591 OF 2000 (D)**

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**Dated this the 6th day of July, 2007**

**J U D G M E N T**

**KOSHY,J.**

Appellant herein is the petitioner in O.P.No.547/1998 on the file of the Family Court, Kozhikode. Respondent is the wife of the appellant. They got married on 8.11.1992. A child was born on August 1993. But child died after four days. Within six months the marriage was broken. According to the appellant petitioner the marriage was broken because she deserted him and he was subjected to physical and mental torture by the respondent. Respondent submitted that after the death of the child, she was beaten up regularly by the petitioner. Therefore she had no option but to go to her residence. The Family Court refused dissolution of marriage on the ground that he was not able to prove cruelty on the part of the respondent. We have called both parties to be present in Court. They were present. Even though we have advised them to live together

appellant stated that it is difficult to him to reside together. Respondent also submitted that she was unable to live with him. We are satisfied that the marriage is beyond salvage. For the last 13 years they were living apart. In these circumstances, we are of the view that this is a case of irretrievable breakdown of marriage as held in a three member bench of the Apex Court in ***Naveen Kohli v. Neelu Kohli (A.I.R. 2006 SC 1675).*** In view of contentions separately and circumstances of the case matrimonial bond is beyond repair. In these circumstances, at paragraph 91 of the judgment it was observed as follows:

> "91. In view of the fact that the parties have been living separately for more than 10 years and a very large number of afore mentioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond."

In this connection we also refer to the Apex Court decision in ***Durga Prasanna Tripathy v. Arundhati Tripathy ((2005) 7 S.C.C. 353)*** . Contending for one reason or other they were living separately and there is mutual desertion and cruelty and in any event there is irretrievable breakdown of marriage. Hence we grant dissolution of marriage. Appeal is allowed to the above extent.

**J.B.KOSHY, JUDGE**

**K.P.BALACHANDRAN, JUDGE**

prp

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A.NO.591 OF 2000 (D)**

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**J U D G M E N T**

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**6th July, 2007**